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AVERP3435USA

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Anne Verhaert

Group No: 1772

Serial No: 10/775,305

Examiner: P. L. Nordmeyer

Filed: February 10, 2004

Confirmation No: 1502

For: **MECHANICAL CLOSURE TAPE**

Mail Stop Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF (PATENT APPLICATION - 37 CFR 192)

1. Transmitted herewith is the APPEAL BRIEF in this application with respect to the Notice of Appeal filed on June 13, 2006 which bears a USPTO date stamp of June 15, 2006.

2. STATUS OF APPLICANT

This application is on behalf of

☒ other than a small entity
☐ small entity

CERTIFICATE OF MAILING (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: July 27, 2006

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(Type or print name of person mailing paper)
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3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 CFR 1.17(f) the fee for filing the Appeal Brief is:

- ☐ small entity \$250.00
☒ other than a small entity \$500.00

Appeal Brief fee due \$ 500.00

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136 apply.

- (a) ☐ Applicant petitions for an extension of time under 37 CFR 1.17(a)-(d) for the total number of months checked below:

Extension (months)	Fee for other than small entity	Fee for small entity
<input type="checkbox"/> one month	\$ 120.00	\$ 60.00
<input type="checkbox"/> two months	\$ 450.00	\$225.00
<input type="checkbox"/> three months	\$ 1,020.00	\$510.00
<input type="checkbox"/> four months	\$ 1,590.00	\$795.00

Fee \$ _____

If an additional extension of time is required please consider this a petition therefor.

- ☐ An extension for _____ months has already been secured and the fee paid therefor of \$ _____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ _____

or

- (b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that Applicant has inadvertently overlooked the need for a petition and fee for extension of time.

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The total fee due is:

Appeal Brief fee \$ 500.00

Extension fee (if any) \$ _____

TOTAL FEE DUE \$ 500.00

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7. FEE DEFICIENCY

☒ If any additional extension and/or fee is required, this is a request therefor and to charge Account No. 18-0988.

AND/OR

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Denise G. Bachtel

(Name)

Denise G. Bachtel

(Signature of person mailing)

July 26, 2006

(Date)

Docket AVERP3435USA

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS**

In re application of Anne Verhaert

Group Art Unit: 1772

Serial No: 10/775,305

Examiner: P. L. Nordmeyer

Filed: February 10, 2004

Confirmation No: 1502

For: **MECHANICAL CLOSURE TAPE**

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APPLICANTS' AMENDED BRIEF ON APPEAL

Dear Sir:

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Appendix: Related Proceedings

This Appeal Brief is submitted in the above-identified application in response to the final Office Action mailed March 16, 2006. Appellants' Notice of Appeal was filed on June 15, 2006. Accordingly, Appellants' Appeal Brief is timely filed, with no extensions of time.

I. REAL PARTY IN INTEREST

The real party in interest is Avery Dennison Corporation, 150 North Orange Grove Boulevard, Pasadena, California 91103, the assignee of the above-captioned application.

II. RELATED APPEALS AND INTERFERENCES

Appellants are aware of no related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the instant appeal.

III. STATUS OF CLAIMS

Claims 1-16 are pending in the application. Claims 1-16 are finally rejected and are the subject of the present Appeal. The claims on appeal are reproduced in the attached APPENDIX.

IV. STATUS OF AMENDMENTS

An amendment under 37 C.F.R. 1.116 was filed on June 13, 2006, but was not entered.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention is directed to a mechanical closure tape in roll form that is useful in the manufacture of disposable articles, particularly diapers. The mechanical fastening elements of the tape are protected from contamination and damage during storage and transport and from being in direct contact with the non-woven fabric of the diaper surface. (Page 2, lines 4-12.)

The tape comprises a composite having a fastening tape (21) and a release tape (31). The fastening tape (21) comprises (a) a backing film (22) having a fastening surface (24), the backing film (22) having a bonding extension section (29) and an engaging extension section (28), wherein the bonding extension section (29) attaches the fastening

tape (21) to a disposable absorbent article (10); and (b) mechanical fastening elements (26) projecting from the backing film (22) at the engaging extension section (28). The release tape (31) comprises a backing layer (32) and an adhesive layer (33), wherein the backing layer (32) of the release tape (31) entirely covers the mechanical fastener material (26) of the fastening tape (21) and wherein the fastening tape (21) is releasably attached to the release tape (31).

In one embodiment, the backing film (22) of the fastening tape (21) includes an adhesive layer (23) in contact with the fastening surface (24) of the backing film (22). The bonding section (29) may be adhesively attached to the absorbent article (10), (See Fig. 3). Alternatively, the bonding section (29) may be welded to the absorbent article (10), (See Fig. 7).

In one embodiment, the release tape (31) has an inner fold (36) and an outer fold (37) wherein the outer fold (37) has a plurality of perforations (38) for releasing the fastening tape (21) from the release tape (31).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Claims 1-5, 12 and 14-16 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Richter et al. (US 6,363,587) in view of Kato (US 5,926,926).
- B. Claims 6, 7 and 9-11 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Richter et al. (US 6,363,587) in view of Kato (US 5,926,926) and further in view of Alberg et al. (US 6,526,631).
- C. Claim 8 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Richter et al. (US 6,363,587) in view of Kato (US 5,926,926) and further in view of Pape et al. (US 4,726,971).
- D. Claim 13 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Richter et al. (US 6,363,587) in view of Kato (US 5,926,926) and further in view of Borgers et al. (US 4,795,456).

VII. ARGUMENTS

- A. Claims 1-5, 12 and 14-16 would not have been obvious based on Richter et al. (US 6,363,587) in view of Kato (US 5,926,926).

The Examiner's Rejection:

Richter et al. disclose a mechanical fastener tape tab element comprising a tape tab backing (33) provided with a pressure-sensitive adhesive layer (36) which allows for attachment of a mechanical fastener material (31) and release tab (35). The tape tab backing (33) is separated into three distinct portions along its length – a first distal end portion (37), an inner tab portion (34) and a second distal end portion (39). The release tab is positioned along the inner tab portion (See Fig. 4). A mechanical fastener is adhered to second distal end portion of the backing tape. The mechanical fastener tape tab laminate of Richter et al. allows the tab to remain in a folded condition around the edge of the diaper prior to use.

Kato discloses a hook or loop fastener comprising panels of loop material on a front section of a diaper. A hook assembly (16) is attached to the rear of the diaper (4). The hook assembly comprises a base tape (22) having an adhesive (21) on one surface for adhering the base tape at one end to the outer layer of the diaper. A panel of hook material (26) is adhered to the other end of the base tape. A cover (3) having an adhesive (34) on one surface is attached at one end to the base tape between the body of the diaper and the hook panel. A small panel of loops (40) is attached to the cover. The cover is adhered to the inner layer (6) of the diaper by an adhesive. The hook assembly is held in a closed position by engaging the hook material with the loop material on the cover until ready for use.

Although the Examiner acknowledges that Richter et al. fail to disclose the backing layer of the release tape entirely covering the mechanical fastener of the fastening tape, the Examiner contends that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to have provided the backing layer of the release tapes covering mechanical fasteners in Richter et al. in order to form a disposable absorbent

article that has release tapes in the closed position in order to facilitate packing of the articles as taught by Kato.

Appellant's Response and Remarks:

The Examiner has failed to establish a prima facie case of obviousness and the rejection is therefore improper. Under *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as codified in MPEP §706.02, in order to establish a prima facie case of obviousness the Patent Office must:

- (1) set forth the differences in the claim over the applied references;
- (2) set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and
- (3) explain why the proposed modifications would be obvious.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. MPEP §706.02(j), *In re Vaek*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In the case at hand, the Examiner has failed to explain why one skilled in the art, at the time the invention was made, would have been motivated to modify the mechanical fastener tape of Richter et al. with the loop containing cover of Kato.

The release tab (35) of Richter is positioned adjacent to the mechanical fastener along the inner tab portion (34) and does not cover the mechanical fastener (31) (see, for example, Fig 4). The release tab (35) and mechanical fastener (31) are in an abutting relationship, and when the tape tab laminate is folded, the mechanical fastener (31) remains exposed to the inner surface of the diaper (1) (see Figs. 6 and 11). Upon folding of the tape tab laminate (30), the adhesive (44) of the release tab adheres to the diaper (1), thereby keeping the tab in a folded condition and preventing extension of the tab beyond the edge of the diaper prior to use. The release tab (35) does not function in the same

manner as Appellant's tape to protect the mechanical fastener (31) from contamination or damage during storage and transport.

The cover (30) of Kato is attached to the hook panel (26) by loop panel (40). (See Figures 6-8.) One skilled in the art would not have been motivated to modify the mechanical fastener tape of Richter et al. with the loop containing cover of Kato, particularly since Richter et al. specifically teach away from the use of the cover of Kato. Richter et al. state at column 1, line 60 to column 2, line 3:

Japanese Patent Application No. 10-137008 and U.S. Patent No. 5,926,926 [**Kato**] disclose the use of a separate small patch of loop material, which can engage with the hooks. These loop patches suggested in these patents are unlikely to be entirely effective in providing for a reliable connection. Also these loops add significant bulk to the tabs creating the possibility of hard bands in the packaged diapers and making it difficult to provide long yardage rolls of prelaminated mechanical fastener tape tabs.

It appears the Examiner has used hindsight construction to dissect the cover of Kato and transplant it into the mechanical fastener of Richter without any teaching or suggestion in either reference for the modification, and in spite of the specific disclosure in Richter of the undesirability of using the a loop containing cover of Kato. Even if such a modification was proper, the resulting construction would not be operable, nor would it be the construction as claimed by Appellant.

Appellant respectfully submits that the references are not sufficient, either alone or in combination, to suggest Appellant's invention to one of ordinary skill in the art. Neither Richter et al., nor Kato, alone or in combination, teach or suggest the composite tape as claimed by Appellant.

- B. Claims 6, 7 and 9-11 would not have been obvious based on Richter et al. (US 6,363,587) in view of Kato (US 5,926,926) and further in view of Alberg et al. (US 6,526,631).

The Examiner's Rejection:

The Examiner has stated that Richter et al., as modified with Kato, disclose the claimed composite tape forming closure tabs for disposable articles above except for the intermediate section being extensible, at least one of the backing film and the backing layer comprises a non-woven polymeric film, an extensible composite or a textile. The Examiner contends that it would have been obvious to one of ordinary skill in the art to have provided the extensible intermediate section formed of polymeric non-woven film or textile in the modified Richter et al. in order to form a mechanical fastener tape tab laminate that remains in a folded position as taught by Alberg et al.

Appellant's Response and Remarks:

Appellant respectfully disagrees with the Examiner's contention. As discussed above, there is no motivation in either Richter or Kato to modify the tape of Richter with the loop containing cover of Kato to form a composite tape having release tape that entirely covers the mechanical fastener material, wherein the release tape is releasably secured to the fastening tape. Alberg et al. do not cure the deficiencies of Richter and Kato. Alberg et al. disclose a mechanical fastener tape that is substantially similar to that of Richter et al., with the exception that the tape tab backing is provided with an elastic section. (See Figure 17.) Alberg et al. also specifically teaches away from the use of the loop containing cover of Kato, at column 1, line 66 to column 2, line 8. Because none of the cited references disclose, teach or suggest the composite tape claimed by Appellant, Appellant respectfully requests reversal of the rejection of claims 6, 7 and 9-11 under 35 U.S.C. §103(a).

- C. Claim 8 would not have been obvious based on Richter et al. (US 6,363,587) in view of Kato (US 5,926,926) and further in view of Pape et al. (US 4,726,971).

The Examiner's Rejection:

The Examiner has stated that Richter et al., as modified with Kato, disclose the claimed composite tape forming closure tabs for disposable articles above except at least one of the backing film and backing layer comprises paper. Pape et al. teach a composite

tape forming closure tabs for disposable articles having at least one of the backing film and backing layer comprises paper for the purpose of forming closures for disposable diapers. The Examiner contends that it would have been obvious to one of ordinary skill in the art to have provided the paper backing film in the modified Richter et al. in order to form closures for disposable diapers as taught by Pape et al.

Appellant's Response and Remarks:

Appellant respectfully disagrees with the Examiner's contention. As discussed above, there is no motivation in either Richter or Kato to modify the tape of Richter with the loop containing cover of Kato to form a composite tape having release tape that entirely covers the mechanical fastener material, wherein the release tape is releasably secured to the fastening tape. Pape et al. do not cure the deficiencies of Richter and Kato. Because none of the cited references disclose, teach or suggest the composite tape claimed by Appellant, Appellant respectfully requests reversal of the rejection of claim 8 under 35 U.S.C. §103(a).

- D. Claim 13 would not have been obvious based on Richter et al. (US 6,363,587) in view of Kato (US 5,926,926) and further in view of Borgers et al. (US 4,795,456).

The Examiner's Rejection:

The Examiner has stated that Richter et al., as modified with Kato, disclose the claimed composite tape forming closure tabs for disposable articles above except the bonding section is weld to the disposable absorbent article. Borgers et al. teach a composite tape forming closure tabs for disposable articles where the bonding section is welded to the disposable absorbent article for the purpose of forming a tab that provides stabilizing means for preventing premature extension of an extensible diaper tab. The Examiner contends that it would have been obvious to one of ordinary skill in the art to have provided the bonding section welded to the disposable absorbent article in the modified Richter et al. in order to form a tab that provides stabilizing means for preventing premature extension of an extensible diaper tab as taught by Borgers et al.

Appellant's Response and Remarks:

Appellant respectfully disagrees with the Examiner's contention. As discussed above, there is no motivation in either Richter or Kato to modify the tape of Richter with the loop containing cover of Kato to form a composite tape having release tape that entirely covers the mechanical fastener material, wherein the release tape is releasably secured to the fastening tape. Borgers et al. do not cure the deficiencies of Richter and Kato. Because none of the cited references disclose, teach or suggest the composite tape claimed by Appellant, Appellant respectfully requests reversal of the rejection of claim 13 under 35 U.S.C. §103(a).


VIII. CONCLUSION

For the foregoing reasons, the honorable Board is requested to reverse the Examiner's rejections of all of the claims pending in the application and to allow these claims.

If any additional fees are required for the filing of this paper, the Commissioner is authorized to charge those fees to Deposit Account #18-0988 (Docket No. AVERP3435USA).

Respectfully submitted,

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APPENDIX
CLAIMS SUBJECT TO APPEAL

1. A composite tape in a roll from which a closure tab for disposable articles can be cut, comprising
a fastening tape comprising (a) a backing film having a fastening surface, the backing film having a bonding extension section and an engaging extension section, wherein the bonding extension section attaches the fastening tape to a disposable absorbent article; and (b) mechanical fastening elements projecting from the backing film at the engaging extension section; and
a release tape comprising a backing layer and an adhesive layer, wherein the backing layer of the release tape entirely covers the mechanical fastener material of the fastening tape and wherein the fastening tape is releasably attached to the release tape.
2. The composite tape of claim 1 wherein the fastening tape further comprises an adhesive layer in contact with the fastening surface of the backing layer.
3. The composite tape of claim 2 wherein the adhesive layer extends continuously along the entire backing layer.
4. The composite tape of claim 2 wherein the adhesive layer adheres to the bonding extension section of the backing film.
5. The composite tape of claim 1 wherein the backing film further comprises an intermediate section positioned between the bonding extension section and the engaging extension section.
6. The composite tape of claim 5 wherein the intermediate section is extensible.

7. The composite tape of claim 1 wherein at least one of the backing film and the backing layer comprises a polymeric film.
8. The composite tape of claim 1 wherein at least one of the backing film and backing layer comprises paper.
9. The composite tape of claim 1 wherein at least one of the backing film and the backing layer comprises an extensible composite.
10. The composite tape of claim 7 wherein the polymeric film is nonwoven.
11. The composite tape of claim 1 wherein at least one of the backing film and the backing layer comprises a textile.
12. The composite tape of claim 1 wherein the bonding section adhesively attaches to the disposable absorbent article.
13. The composite tape of claim 1 wherein the bonding section is welded to the disposable absorbent article.
14. The composite tape of claim 1 wherein the release tape has an outer fold and an inner fold.
15. The composite tape of claim 14 wherein the outer fold of the release tape has a plurality of perforations for releasing the fastening tape from the release tape.
16. The composite tape of claim 1 wherein the mechanical fastening elements comprise hooks.

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APPENDIX

EVIDENCE

None

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APPENDIX

RELATED PROCEEDINGS

None